CHAPTER 4 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

761—4.1(22,304) General provisions.

- **4.1(1)** *Scope of chapter.*
- a. This chapter describes the provisions governing public access to records that are owned by or in the physical possession of the department, including records of the Iowa railway finance authority. However, access to personnel and payroll records may also be subject to the rules of the department of personnel or the department of revenue and finance.
- b. This chapter does not affect the policy of the department to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.
- c. This chapter does not make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of these records to the public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.
- **4.1(2)** Custodian. Except as otherwise specified, requests under this chapter shall be submitted to the custodian of the record. The custodian of a record is the person who heads the departmental office responsible for that record. The department's "Records Management Manual" identifies the offices that are responsible for particular records.
- a. As used in this chapter, the term "custodian" includes the custodian's superiors and the custodian's designees.
- b. The custodian's designees may include but are not limited to the records center and the legal staff of the department's general counsel division.
- c. The custodian of a record is authorized to provide or deny access to that record in accordance with the provisions of this chapter. However, the authority to provide access to a confidential record is limited by rule 4.10(22).
- **4.1(3)** *Records center.* If a requester does not know the identity of the custodian of a record, the request may be submitted to the records center. The records center will forward the request to the custodian. The address of the department's records center is: Records Center, Bureau of Information Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.
 - **4.1(4)** *Records management manual.*
- a. The department's "Records Management Manual" contains the records management information required by Iowa Code chapter 304.
- b. Chapter III of the manual contains the descriptive information on records that is required by Iowa Code section 22.11. Chapter III, as revised through June 1991, is made a part of these rules.
- c. The manual is available for examination and copying at the department's records center and at various other departmental offices located throughout the state. A copy of the manual may be obtained at cost from the records center.
- **4.1(5)** Availability of open records. Open records of the department are available to the public for examination and copying unless otherwise provided by rule or statute.
- **4.1(6)** Data processing matching. All departmental data processing systems that have common data elements can potentially match, collate and compare personally identifiable information.
 - **4.1**(7) *Warranty*. No warranty of the accuracy or completeness of a record is made.
- **4.1(8)** Existing records. A request for access shall apply only to records that exist at the times the request is made and access is provided. The department is not required to create, compile or procure a record solely for the purpose of making it available. Exception: See rule 4.10(22).
- **4.1(9)** Uniform rules. "Uniform rules" means the "Fair Information Practices" segment of the "Uniform Rules on Agency Procedure," which was accepted by the Governor on March 9, 1988, and is printed in Volume I of the Iowa Administrative Code. Except as amended, the department adopts the

uniform rules by reference. Uniform rule X.1 will appear as subrule 4.1(10) and uniform rules X.2 to X.8 will appear as rules 4.2(22) to 4.8(22).

- **4.1(10)** *Definitions*. As used in this chapter:
- "Individual" means a living person or any other legal entity.
- "Public" means those persons who are not officials, employees or agents of the department.
- "Requester" means a member of the public.

This rule is intended to implement Iowa Code chapter 22 and section 304.17.

- **761—4.3(22)** Requests for access to records. Insert 4.3(1) and 4.3(7) in lieu of the uniform rules and amend 4.3(2) to 4.3(5) as follows:
- **4.3(1)** Submission of request for access. In general, a request for access to a record should be directed to the custodian. However:
- a. If the custodian is not known by the requester, the request shall be directed to the records center at the address listed in subrule 4.1(3).
- b. Any request that may be related to a potential or an actual tort liability claim or other litigation shall be directed to the General Counsel Division, 800 Lincoln Way, Ames, Iowa 50010. If the custodian receives a request of this nature, the custodian shall forward the request to the general counsel division.
- c. If a request for access is misdirected, departmental personnel will promptly forward the request to the appropriate person within the department.
- **4.3(2)** Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., excluding Saturdays, Sundays and legal holidays".
- **4.3(3)** Request for access. Insert the following sentence after the first sentence: "A written request for access to an open record may be required only when there is uncertainty as to exactly what record is being requested."
- **4.3(4)** *Response to requests*. Insert the following after the second sentence of the first paragraph: "Examples of requests for access that could require time for compliance due to their size or nature include but are not limited to the following:
- a. Searching for and collecting records from an office or offices that are separate from the one processing the request.
- b. Searching for and collecting a voluminous amount of separate and distinct records included in a single request.
 - c. Scheduling the use of a copier if the volume of material to be copied is large."
- **4.3(5)** Security of records. In lieu of the words "search or remove any record from agency files", insert "search agency files or remove any records from the place where they are made available". Also, insert the following sentences at the end of 4.3(5): "Original paper records shall be released from departmental custody only upon court order. At least one certified copy shall be retained in the file if the original record is released."
- **4.3**(7) *Fees.* The department may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law.

761—4.4(22) Access to confidential records.

- **4.4(3)** Notice to subject of record and opportunity to obtain injunction. Insert the following sentence at the end of 4.4(3): This subrule does not apply to releases by the custodian under subrule 4.10(1).
- **4.4(6)** Reconsideration of denied request. If a request for access to a confidential record is denied, the requester may apply to the director of transportation for reconsideration of the request.

761—4.9(22) Confidential records. This rule describes the types of departmental information or records that are confidential. This rule is not exhaustive. A citation of the legal authority for confidentiality follows each description.

As related to particular types of confidential information or records, this rule also includes exceptions to confidentiality, the rights of certain persons to have access, and permissible disclosures.

Descriptions:

- **4.9(1)** Hospital, medical and professional counselor records of the condition, diagnosis, care or treatment of present or former patients or counselees. (Iowa Code 22.7)
 - a. This category of records includes but is not limited to:
- (1) Hospital, medical and professional counselor records of present or former departmental employees.
- (2) Medical statements, including vision reports, filed with the department for the purpose of issuing, suspending, revoking, canceling or denying licenses or permits to operate motor vehicles in Iowa.
- b. Notwithstanding this subrule, "State of Iowa Employers Work Injury Report" forms are not confidential.
- c. Records relating to employee on-the-job injuries shall be released to the industrial commissioner.
 - d. The subject of a hospital, medical or professional counselor record has the right of access to it.
 - **4.9(2)** Trade secrets which are recognized and protected by law. (Iowa Code section 22.7)
- a. The person who furnished the trade secret information has the right of access to this information.
 - b. Reserved.
- **4.9(3)** Records which constitute attorney work product, attorney-client communications, or that are otherwise privileged. (Attorney work product is confidential under Iowa Code sections 22.7, 622.10 and 622.11, Iowa R. C. P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.)
 - a. This category of records includes but is not limited to:
 - (1) Investigations conducted in anticipation of tort claims or other litigation.
 - (2) Records related to threatened litigation over title.
 - b. Reserved.
- **4.9(4)** Peace officers' investigative reports, except where disclosure is required or authorized by the Iowa Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident are not confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or would pose a clear and present danger to the safety of an individual. (Iowa Code section 22.7)
- **4.9(5)** Reports to the department which, if released, would give advantage to competitors and serve no public purpose. (Iowa Code section 22.7)
- a. Examples of records which could in the proper circumstances be determined to be within this category include but are not limited to:
- (1) Financial reports filed by contractors for departmental use in determining their eligibility to bid on projects advertised for letting. This includes financial information from these reports that is stored on computer.
- (2) Documents submitted by firms for departmental use in certifying their eligibility as disadvantaged business enterprises or women's business enterprises.
- (3) Prequalification forms filed with the department under rule 761—20.8(307). This includes the selection committee's working papers; however, the final selection committee report is not confidential once it has been approved by the appropriate division director. Selection committee activities may also fall under subrule 4.9(20).

- (4) Financial reports filed with the department for the purpose of seeking certificates of self-insurance under Iowa Code section 321A.34.
- (5) Copies of agreements between sign owners and landowners filed with the department in support of the issuance of outdoor advertising permits.
 - (6) Copies of private contracts between railroads and shippers or other private parties.
- (7) Barge terminal surveys which ask for shipping and financial information from barge companies.
 - b. The subject of the record has the right of access to it.
- **4.9(6)** Criminal identification files, except for the records of current and prior arrests. (Iowa Code section 22.7)
- a. The custodian may disseminate criminal identification data to a peace officer, a criminal justice agency, or a state or federal regulatory agency if the custodian is satisfied that the need to know and the intended use are reasonable.
 - b. The custodian shall also comply with Iowa Code section 692.3.
- **4.9**(7) Personal information in confidential personnel records of present or former departmental employees. (Iowa Code section 22.7)
- a. Submission by an employee of an employment application form shall constitute authorization for the release of a copy of the employee's complete personnel records to the selecting authority.
- b. Confidential personnel information relating to a particular program shall be released to that agency or company which is administering the program.
 - c. The subject of a personnel record has the right of access to it.
- **4.9(8)** Communications not required by law, rule or procedure that are made to the department by identified persons outside of government, to the extent that it could reasonably be believed that those persons would be discouraged from making the communications if they were made available for general public examination. (Iowa Code section 22.7)
- a. This category of records includes but is not limited to exit interviews for voluntary terminations.
 - b. Exceptions to confidentiality:
 - (1) A communication is not confidential if its author consents to its release.
- (2) Information in a communication that can be disclosed without identifying its author or enabling others to ascertain that identity is not confidential.
- (3) Information in a communication that indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act is not confidential unless disclosure would plainly and seriously jeopardize a continuing investigation or would pose a clear and present danger to the safety of any person.
 - c. The author of a communication has the right of access to it.
- **4.9(9)** Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a government body, to the extent that their disclosure could reasonably be believed by the lawful custodian to interfere with the accomplishment of the objectives for which they are administered. (Iowa Code section 22.7)
- **4.9(10)** Information concerning the nature and location of an archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. (Iowa Code section 22.7)
- **4.9(11)** Information concerning the nature and location of an ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. (Iowa Code section 22.7)
- **4.9(12)** Those portions of the department's staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by departmental staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, pro-

secution or settlement of cases, when disclosure of these statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the department. (Iowa Code sections 17A.2 and 17A.3)

- **4.9(13)** The detailed minutes and tape recording of a closed session of the commission. However, if the closed session regards a real estate purchase, the minutes and tape recording shall be available for public inspection when the transaction discussed is completed. (Iowa Code section 21.5)
- **4.9(14)** Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code sections 321.266 and 321.271)
 - a. However, access shall be granted to those persons authorized by Iowa Code section 321.271.
- b. Pursuant to Iowa Code section 22.7, the lawful custodian may release the following information from peace officer's accident reports even though the reports are confidential: date, time and location of the accident, names of parties to the accident, owners and descriptions of the motor vehicles involved, name of investigating officer, names of injured, locations where motor vehicles and injured were transported, and the identification and owners of damaged property other than motor vehicles.
- **4.9(15)** All information filed with the court for the purpose of securing a warrant for an arrest until the arrest has been made and the warrant has been returned. (Iowa Code section 804.29)
- **4.9(16)** All information filed with the court for the purpose of securing a warrant for a search until the warrant has been executed and returned. (Iowa Code section 808.13)
- **4.9(17)** Information obtained by the department from the examining of reports or records required to be filed or kept under the provisions of Iowa Code chapter 452A, except where disclosure is authorized by chapter 452A. (Iowa Code section 452A.63)
- **4.9(18)** Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- **4.9(19)** Except as required by Iowa Code section 6B.45, the parcel file for a right-of-way acquisition until title has passed to the state and all contract and relocation claims have been paid. (Iowa Code section 22.7)
- **4.9(20)** Those records which, if disclosed, would diminish competition or would give an improper advantage to persons who are in an adverse position to the department. These records shall be kept confidential until the transaction to which they relate is consummated. However, if disclosure would reveal information which would hinder future competition, the records shall be kept confidential. (Iowa Code sections 17A.2, 17A.3, 22.7 and 313.10, Iowa Code chapter 553, and rules 761—Chapter 20)
- a. Examples of records which could, in the proper circumstances, be determined to be within this category include but are not limited to:
 - (1) Detailed estimates of the cost of a proposed contract.
 - (2) Economic analyses for determining pavement types.
 - (3) Negotiations for a proposed contract.
 - (4) Methodology for determining unfair bidding practices or bid rigging.
 - (5) Price quotations solicited.
- (6) The value of points assigned to a bid rating formula prior to the time set for public opening of bids.
- (7) Laboratory testing reports of suppliers' products. These may also be trade secrets. The subject of the report has the right of access to it.
 - b. Reserved.
- **4.9(21)** Income tax forms or rental, income or expense statements furnished by relocatees as documentation for relocation assistance payments. (Iowa Code sections 22.7 and 422.20, 5 U.S.C. 552 and 552a)
 - a. The subject of the form or statement has the right of access to it.
 - Reserved.

- **4.9(22)** Audit reviews for determining EEO contract compliance. (Iowa Code section 22.7, 5 U.S.C. 552 and 552a)
 - a. The subject of the audit review has the right of access to it.
 - b. Reserved.
 - **4.9(23)** Tax records made available to the department. (Iowa Code section 422.20)
- **4.9(24)** All other information or records that by law are or may be confidential, with the following exceptions:
 - a. Records of the departmental library.
 - Reserved.

This rule is intended to implement Iowa Code chapters 22 and 553; Iowa Code sections 6B.45, 17A.2, 17A.3, 21.5, 72.3, 313.10, 321.266, 321.271, 422.20, 452A.63, 602.10112, 622.10, 692.3, 804.29 and 808.13; and Title 5, sections 552 and 552a of the United States Code.

761—4.10(22) Release of confidential records.

- **4.10(1)** *Release by custodian.*
- a. The custodian may release a confidential record or a portion of it:
- (1) To the legislative fiscal bureau pursuant to Iowa Code section 2.52.
- (2) To the citizens' aide pursuant to Iowa Code section 2C.9.
- (3) To other governmental officials and employees only as needed to discharge their duties.
- (4) To those persons as permitted or required by rule 761—4.9(22).
- b. The custodian shall ensure that there is sufficient information to provide reasonable assurance that access to the confidential record may be granted. (See 4.4(1) and 4.4(2) of the uniform rules.)
- c. Even though a record is "confidential" it may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The custodian shall release the nonconfidential portions of a record that contains a mixture of confidential and nonconfidential information except as provided in Iowa Code subsections 22.8(4) and 22.10(4).
- **4.10(2)** Release by director. The director of transportation may release a confidential record or a portion of it to a person not covered in subrule 4.10(1) if the release:
 - a. Is permitted by statute, rule or another provision of law, and
- b. Is not inconsistent with the stated or implied purpose of the law which establishes or authorizes confidentiality.
- **4.10(3)** *Information released.* If a person is provided access to less than an entire record, the custodian shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released, or a copy of the record from which has been deleted the information not to be released.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTERS 5 to 9 Reserved